



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/152284

PRELIMINARY RECITALS

Pursuant to a petition filed September 23, 2013, under Wis. Stat. §49.45(5)(a), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on October 17, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly denied petitioner and her husband BadgerCare Plus (BCP) coverage due to access to other health insurance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Lynnae Boyenga

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner lives with her husband and one child.
3. Petitioner applied for BCP on August 14, 2013 for her household.

4. Petitioner's gross monthly household income at the time of application was \$2415.13. See Exhibit 3. This is 148% of the Federal Poverty Level (FPL).
5. Petitioner's husband's employer verified that it offered health insurance that he could have signed up for within the previous 12 months of the application. See Exhibit 4.
6. On September 16, 2013 the agency issued a notice of decision to petitioner stating that effective August 1, 2013 her child would be covered by BCP but that she and her husband would not be covered by BCP because they were able to get health insurance from the employer and the premium for the employee only coverage would not be more than 9.5% of the family's income. See Exhibit 1.

DISCUSSION

To be eligible for BCP, a person must be under age 19, a custodial parent, or the spouse of a custodial parent. Wis. Admin. Code, §DHS 103.03(1)(f)1. Effective July 1, 2012 – December 31, 2013, the Department implemented new provisions concerning BCP eligibility for families with access to employer sponsored insurance. See BCP Handbook, §7.1 available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>. Under the policy, if an employer provides health insurance, members of the household are ineligible for BCP under certain circumstances. BCP Handbook, §7.1.1. The policy provides:

To prevent the crowd out of private insurance, BadgerCare Plus (BC+) benefits may be denied or terminated for individuals who have access to certain employer sponsored health insurance policies when those individuals:

1. Are adult parents and caretaker relatives with household income above 133% of the FPL.
2. Are infants under age 1 with household incomes over 300% of the FPL, children ages 1 through 5 with household incomes over 185% of the FPL and children ages 6 through 18 with household incomes over 150% of the FPL,
3. Are pregnant women eligible under the BC+ Prenatal Program at any income level,
4. Are not in an exempt category (see list below) and,
5. Do not have a good cause reason for failure to enroll in an employer sponsored health insurance plan.

Individuals exempt from the policies related to health insurance access and coverage are:

1. Continuously Eligible Newborns,
2. Children under age 19 who have met a deductible (exempt only during the deductible period),
3. Infants less than 1 year old with household income at or below 300% of the FPL,
4. Children ages 1 through 5 (up to age 6) with household income at or below 185% of the FPL,
5. Children ages 6 to 18 with household income at or below 150% of the FPL,
6. Former Foster Care Youth (FFCY),
7. Pregnant women, other than those in the BC+ Prenatal Program,
8. Parents and caretakers who are blind or disabled (including MAPP Disabled), as determined by the DDB, or through the Presumptive Disability process (MEH 5.9), and
9. Parents, caretaker relatives, and children who are in an Extension.

BC+ Prenatal Program members are subject to different policies related to health insurance coverage. Refer to (7.4.1) (7.5) for the policies regarding the rules for current coverage and dropping coverage under the BC+ Prenatal Program.

Access to health insurance includes:

1. Past Access. (7.2)
2. Current Access. (7.3)
3. Coverage. (7.4)
4. Dropped Coverage. (7.5).

See BCP Handbook, §7.1.1.

In this case the husband's employer verified that he had past access to their health insurance. As such the agency reviewed the policy relating to past access for parents, which provides:

Non-exempt parents and caretakers over age 18 with household incomes over 133% of the FPL who had access to health insurance, including access due to a qualifying event, in the twelve months prior to the application or renewal date, are not eligible for BC+ benefits if the access was through the current employer of an adult family member who is currently living in the household and,

- The individual could have enrolled in the employer's plan under the current coverage period at any time in the past 12 months prior to the application or renewal date,
- The cost of coverage for an employee-only plan does not exceed 9.5% of the monthly household income, and
- There is no good cause reason for not signing up for the coverage.

When an employed parent or caretaker has been determined to have had past access, the individual's spouse will also be considered to have past access if the employer offers a plan that would provide coverage to the spouse, such as employee + spouse or employee + family coverage.

Non-pregnant, non-disabled parents and caretaker relatives with household income above 150% of the FPL will not be eligible for BadgerCare Plus benefits if they had past access to a State Employee's health care plan, regardless of the amount of the premium. Non-pregnant, non-disabled parents and caretakers with access to state employee health insurance, who have household income between 133% and 150% FPL, are only ineligible for BadgerCare Plus if the employee-only premiums are not more than 9.5% of household income.

Example 2: Joe and his wife, Mary, apply for BadgerCare Plus for themselves and their 3 children on July 2, 2012. Their income is 145% of the FPL. Joe works for ABC Company. ABC Company offers an employee-only plan as well as a family plan. Joe's cost for the employee-only plan is less than 9.5% of the household's countable income. The last open enrollment period to sign up for the employer sponsored insurance was October 1, 2011 through October 31, 2011. The plan coverage period is January 1, 2012 through December 31, 2012.

Since Joe could have enrolled in the past 12 months and could have had coverage under the current coverage period, and the premiums would have been less than 9.5% of the family's income, he is ineligible. Since the employer offers a family plan that would cover Mary, she is also ineligible. Children under age 19 are not subject to the 9.5% access tests so the children's eligibility is not affected.

See BCP Handbook §7.2.1.2 (emphasis added).

The employee-only premium for this employer is \$62.02 monthly. \$229.44 is 9.5% of the household income. Thus, because petitioner's husband had access to the employer's health insurance and the premium for the "employee only plan" did not exceed 9.5% of the household income, and because the employer also offered coverage for petitioner, the petitioner and her husband are not eligible for BCP under this policy which is in effect until January 1, 2014. The only way they are exempt from this policy is a finding of good cause which is described as:

Good cause reasons for failure to enroll in an employer sponsored health insurance plan in the 12 months prior to application or renewal are:

Discontinuation of health insurance benefits by the employer;

1. During the time period when the employee failed to enroll in the health insurance coverage, one or more members of the individual's family was covered through:
 - a. A private health insurance policy; **or**
 - b. Medicaid, or BC+;

And no one in the Test Group at that time was eligible for:

- BadgerCare,
 - BC+ with a household income above 150% of the FPL,
 - If the failure to enroll occurred on or after July 1, 2012, BC+ with household income above 133% of the FPL,
 - BC+ Extension, **or**
3. BC+ as a Pregnant Woman (not including the BC+ Prenatal Program).
The employment ended, **or**
 4. Any other reason determined by DHS as a good cause reason. Local agencies must contact the DHS CARES Call Center for approval before granting good cause for any reason not stated above.

See BCP Handbook, §7.2.2. There is no evidence that petitioner met the good cause exemptions.

Petitioner did not dispute the income calculations or disagree that the employer offered coverage as stated above. She did testify that she had been confused about how this policy was applied, however, and that they had applied for the BCP after the employer's rates for their family's coverage went up and became cost prohibitive. Unfortunately for petitioner, I do not have the authority to change law or policy based on fairness arguments. It is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency correctly denied petitioner and her husband BCP coverage due to access to other health insurance.

THEREFORE, it is

ORDERED

That the petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

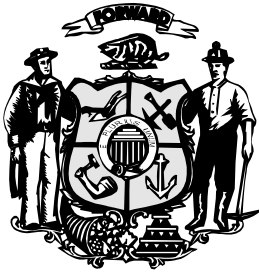
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of November, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 21, 2013.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability